

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISIONFILED BY *[Signature]* D.C.
05 AUG 30 AM 7:44THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TN, MEMPHIS

KEVIN MILLEN,

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Plaintiff,

No. 05-2070-M1/An

vs.

WENDY'S RESTAURANT,

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X

Defendants.

ORDER OF DISMISSAL

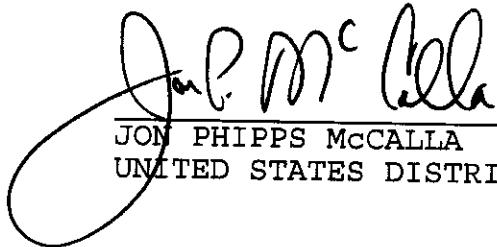
Plaintiff Kevin Millen filed a pro se complaint on the form used for commencing actions pursuant to 42 U.S.C. § 1983 on January 27, 2005, along with a motion seeking leave to proceed in forma pauperis. As the plaintiff's motion to proceed in forma pauperis contained no information concerning his monthly income, assets, and financial obligations, the Court issued an order on April 22, 2005 denying leave to proceed in forma pauperis and directing the plaintiff to pay the \$150 civil filing fee within thirty days. On April 28, 2005, plaintiff submitted a document, entitled "Motion to have In Forma Pauperis Status Granted," which the Court construed as a motion for reconsideration and, as so construed, denied in an order issued on May 13, 2005. On May 24, 2005, plaintiff filed another motion, entitled "Order Asking for Leave to Use In Forma Pauperis And Order Directing Defendants to Pay Monetary funds [sic] Owed to Plaintiff," which the Court

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construed as a second motion seeking reconsideration of the decision denying leave to proceed in forma pauperis. The Court issued an order on July 19, 2005 denying the motion for reconsideration and advising the plaintiff that, "[i]f the civil filing fee is not paid by August 5, 2005, this action will be dismissed, without prejudice, for failure to prosecute." 07/19/05 Order at 3.

The date specified in the July 19, 2005 order has passed, and the plaintiff has not paid the civil filing fee. Accordingly, the Court DISMISSES the complaint without prejudice, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute.

IT IS SO ORDERED this 29 day of August, 2005.



JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 8 in case 2:05-CV-02070 was distributed by fax, mail, or direct printing on August 30, 2005 to the parties listed.

Kevin Millen
4104 Stillwood Dr.
Memphis, TN 38128

Honorable Jon McCalla
US DISTRICT COURT